A bill for an act

relating to insurance; amending the fair claims processing act as it applies to certain automobile insurance claims; providing certain rights for third-party claimants in insurance settlement of claims; amending Minnesota Statutes 2008, section 72A.201, subdivision 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 72A.201, subdivision 6, is amended to read:

Subd. 6. **Standards for automobile insurance claims handling, settlement offers, and agreements.** (a) This subdivision applies to automobile insurance claims made by insureds, claimants, or both, as those terms are defined in subdivision 3, depending upon whether the claim is a first-party claim by an insured against the insured's own insurer, or a third-party liability or other claim by a claimant against an insured, which the insured has submitted to the insured's insurer. A person making a nonliability claim for basic economic loss benefits, as defined in section 65B.43, subdivision 10, from a plan of reparation security under which the person is not an insured, is considered a claimant for purposes of this subdivision. Where a provision of this subdivision uses the phrase "insured or claimant," it means the insured in the case of a first-party claim and means the claimant in the case of a third-party claim.

(b) In connection with any settlement or offer of settlement made to:

(1) an insured under this subdivision, the insurer must provide the insured with a written explanation of the basis for the amount of the settlement or offer of settlement; and

(2) a claimant under this subdivision, the insurer must provide the claimant with a written explanation of the basis for the amount of the settlement or offer of settlement.

This does not limit the right of the insurer to also provide the written explanation, or any other information, to the insurer's insured.

(c) In addition to the acts specified in subdivisions 4, 5, 7, 8, and 9, the following acts by an insurer, adjuster, or a self-insured or self-insurance administrator constitute unfair settlement practices:

(1) if an automobile insurance policy provides for the adjustment and settlement of an automobile total loss on the basis of actual cash value or replacement with like kind and quality and the insured or claimant, whichever is appropriate under paragraph (a), is not an automobile dealer, failing to offer one of the following methods of settlement:

~~(a)~~ (i) comparable and available replacement automobile, with all applicable taxes, license fees, at least pro rata for the unexpired term of the replaced automobile's license, and other fees incident to the transfer or evidence of ownership of the automobile paid, at no cost to the insured or claimant, whichever is appropriate under paragraph (a), other than the deductible amount as provided in the policy;

~~(b)~~ (ii) a cash settlement based upon the actual cost of purchase of a comparable automobile, including all applicable taxes, license fees, at least pro rata for the unexpired term of the replaced automobile's license, and other fees incident to transfer of evidence of ownership, less the deductible amount as provided in the policy. The costs must be determined by:

~~(i)~~ (A) the cost of a comparable automobile, adjusted for mileage, condition, and options, in the local market area of the insured or claimant, whichever is appropriate under paragraph (a), if such an automobile is available in that area; or

~~(ii)~~ (B) one of two or more quotations obtained from two or more qualified sources located within the local market area when a comparable automobile is not available in the local market area. The insured or claimant, whichever is appropriate under paragraph (a), shall be provided the information contained in all quotations prior to settlement; or

~~(iii)~~ (C) any settlement or offer of settlement which deviates from the procedure above must be documented and justified in detail. The basis for the settlement or offer of settlement must be explained to the insured or claimant, whichever is appropriate under paragraph (a);

(2) if an automobile insurance policy provides for the adjustment and settlement of an automobile partial loss on the basis of repair or replacement with like kind and quality and the insured is not an automobile dealer, failing to offer one of the following methods of settlement:

~~(a)~~ (i) to assume all costs, including reasonable towing costs, for the satisfactory repair of the motor vehicle. Satisfactory repair includes repair of both obvious and hidden

damage as caused by the claim incident. This assumption of cost may be reduced by applicable policy provision; or

~~(b)~~ (ii) to offer a cash settlement sufficient to pay for satisfactory repair of the vehicle. Satisfactory repair includes repair of obvious and hidden damage caused by the claim incident, and includes reasonable towing costs;

(3) regardless of whether the loss was total or partial, in the event that a damaged vehicle of an insured or claimant, whichever is appropriate under paragraph (a), cannot be safely driven, failing to exercise the right to inspect automobile damage prior to repair within five business days following receipt of notification of claim. In other cases the inspection must be made in 15 days;

(4) regardless of whether the loss was total or partial, requiring unreasonable travel of a claimant or insured, whichever is appropriate under paragraph (a), to inspect a replacement automobile, to obtain a repair estimate, to allow an insurer to inspect a repair estimate, to allow an insurer to inspect repairs made pursuant to policy requirements, or to have the automobile repaired;

(5) regardless of whether the loss was total or partial, if loss of use coverage exists under the insurance policy, failing to notify an insured at the time of the insurer's acknowledgment of claim, or sooner if inquiry is made, of the fact of the coverage, including the policy terms and conditions affecting the coverage and the manner in which the insured can apply for this coverage;

(6) regardless of whether the loss was total or partial, failing to include the insured's deductible in the insurer's demands under its subrogation rights. Subrogation recovery must be shared at least on a proportionate basis with the insured, unless the deductible amount has been otherwise recovered by the insured, except that when an insurer is recovering directly from an uninsured third party by means of installments, the insured must receive the full deductible share as soon as that amount is collected and before any part of the total recovery is applied to any other use. No deduction for expenses may be made from the deductible recovery unless an attorney is retained to collect the recovery, in which case deduction may be made only for a pro rata share of the cost of retaining the attorney. An insured is not bound by any settlement of its insurer's subrogation claim with respect to the deductible amount, unless the insured receives, as a result of the subrogation settlement, the full amount of the deductible. Recovery by the insurer and receipt by the insured of less than all of the insured's deductible amount does not affect the insured's rights to recover any unreimbursed portion of the deductible from parties liable for the loss;

(7) requiring as a condition of payment of a claim that repairs to any damaged vehicle must be made by a particular contractor or repair shop or that parts, other than

window glass, must be replaced with parts other than original equipment parts or engaging in any act or practice of intimidation, coercion, threat, incentive, or inducement for or against an insured to use a particular contractor or repair shop. Consumer benefits included within preferred vendor programs must not be considered an incentive or inducement. At the time a claim is reported, the insurer must provide the following advisory to the insured or claimant, whichever is appropriate under paragraph (a):

"You have the legal right to choose a repair shop to fix your vehicle. Your policy will cover the reasonable costs of repairing your vehicle to its pre-accident condition no matter where you have repairs made. Have you selected a repair shop or would you like a referral?"

After an insured or claimant, whichever is appropriate under paragraph (a), has indicated that the insured or claimant has selected a repair shop, the insurer must cease all efforts to influence the insured's or claimant's choice of repair shop;

(8) where liability is reasonably clear, failing to inform the claimant in an automobile property damage liability claim that the claimant may have a claim for loss of use of the vehicle;

(9) failing to make a good faith assignment of comparative negligence percentages in ascertaining the issue of liability;

(10) failing to pay any interest required by statute on overdue payment for an automobile personal injury protection claim;

(11) if an automobile insurance policy contains either or both of the time limitation provisions as permitted by section 65B.55, subdivisions 1 and 2, failing to notify the insured in writing of those limitations at least 60 days prior to the expiration of that time limitation;

(12) if an insurer chooses to have an insured or claimant, whichever is appropriate under paragraph (a), examined as permitted by section 65B.56, subdivision 1, failing to notify the insured or claimant of all of the insured's or claimant's rights and obligations under that statute, including the right to request, in writing, and to receive a copy of the report of the examination;

(13) failing to provide, to an insured or claimant, whichever is appropriate under paragraph (a), who has submitted a claim for benefits described in section 65B.44, a complete copy of the insurer's claim file on the insured or claimant, excluding internal company memoranda, all materials that relate to any insurance fraud investigation, materials that constitute attorney work-product or that qualify for the attorney-client privilege, and medical reviews that are subject to section 145.64, within ten business days of receiving a written request from the insured or claimant. The insurer may charge the

insured or claimant a reasonable copying fee. This clause supersedes any inconsistent provisions of sections 72A.49 to 72A.505;

(14) if an automobile policy provides for the adjustment or settlement of an automobile loss due to damaged window glass, failing to provide payment to the insured's or claimant's, whichever is appropriate under paragraph (a), chosen vendor based on a competitive price that is fair and reasonable within the local industry at large.

Where facts establish that a different rate in a specific geographic area actually served by the vendor is required by that market, that geographic area must be considered. This clause does not prohibit an insurer from recommending a vendor to the insured or claimant, whichever is appropriate under paragraph (a), or from agreeing with a vendor to perform work at an agreed-upon price, provided, however, that before recommending a vendor, the insurer shall offer its insured or claimant, whichever is appropriate under paragraph (a), the opportunity to choose the vendor. If the insurer recommends a vendor, the insurer must also provide the following advisory:

"Minnesota law gives you the right to go to any glass vendor you choose, and prohibits me from pressuring you to choose a particular vendor.";

(15) requiring that the repair or replacement of motor vehicle glass and related products and services be made in a particular place or shop or by a particular entity, or by otherwise limiting the ability of the insured or claimant, whichever is appropriate under paragraph (a), to select the place, shop, or entity to repair or replace the motor vehicle glass and related products and services; or

(16) engaging in any act or practice of intimidation, coercion, threat, incentive, or inducement for or against an insured or claimant, whichever is appropriate under paragraph (a), to use a particular company or location to provide the motor vehicle glass repair or replacement services or products. For purposes of this section, a warranty shall not be considered an inducement or incentive.

**EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to claims submitted on or after that date.